



State of California—Health and Human Services Agency
Department of Health Services
Common Questions about
Local Enforcement Implementation
Senate Bill 460

Childhood Lead Poisoning Prevention Branch,
Lead-Hazard Reduction Section (November 2002)



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Governor

Introduction

This document describes some portions of Senate Bill 460, which takes effect on January 1, 2003. This bill creates several mechanisms for local enforcement agencies to take a variety of actions to investigate, inspect, and order lead hazards abated or otherwise corrected. Many local enforcement agencies have asked for information about the practical aspects of implementing the laws in this bill.

This document provides general information in response to specific questions that the Childhood Lead Poisoning Prevention Branch (CLPPB) at the Department of Health Services (DHS) has received. While this document addresses some general issues related to this bill, it does not constitute legal advice or opinion. For a legal interpretation of this bill and its effect on local agencies, please consult your city attorney, district attorney, or county counsel as appropriate.

CLPPB recommends that you review the laws in SB 460 and the informational sheet entitled "Summary of California's Lead Hazard Reduction Enforcement: Senate Bill 460" before reading this document.

Common Questions

1. Why did the legislature pass this bill?

Local enforcement agencies, DHS, and the Bureau of State Audits noted that the prevention of childhood lead poisoning through the reduction of lead hazards has been hampered by lack of effective enforcement laws. SB 460 fills in gaps in existing laws so that each jurisdiction in California can take enforcement actions, when necessary, to compel property owners to abate or otherwise correct lead hazards.

2. The laws in this bill are referred to as "state mandated." What is the effect of that on local agencies?

The Legislative Counsel of California defines a state mandate as a "State legislative enactment or administrative regulation that mandates a new program or higher level of service on the part of a local

government, the costs of which are required by the California Constitution to be reimbursed." However, this bill specifically states that no reimbursement is required by the state. (Stats. 2002, C. 931, § 12, eff. January 1, 2003) Your agency's legal representative can describe the implication of the state mandate on your agency.

3. How can my jurisdiction fund these new activities? Will we need additional staff to become DHS-certified to conduct inspections?

The Governor's budget for 2002-2003 includes \$2.5 million in funding allocated for enforcement activities at the local level. DHS will oversee the disbursement of these monies. The activities described in this document (and proscribed by the bill's laws) can be paid for using these funds. Local jurisdictions can apply for funding to cover the course and materials cost of training inspectors to become DHS-certified.

Whether or not your jurisdiction will need additional DHS-certified personnel to perform inspections will depend on your legal representative's interpretation of this bill and your jurisdiction's configuration for conducting housing and building inspections.

4. Does every tip or complaint that comes to my agency about a potential lead hazard have to be investigated?

As with other tips and complaints about potential violations of health and housing laws in your agency's jurisdiction, how your agency prioritizes and responds to tips and complaints about lead hazards is something that your agency's management must determine.

When investigating a tip or complaint about a lead hazard, keep in mind that SB 460 contains two definitions for "lead hazard." In section 1.5 of SB 460 [which amends State Housing Law (Health & Safety § 17920.10)], a "lead hazard" is defined as follows:

"(a) Any building or portion thereof including any dwelling unit, guestroom, or suite of rooms, or portion thereof, or the premises on which it is located, is deemed to be in violation of

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this part as to any portion that contains lead hazards. For purposes of this part, "lead hazards" means deteriorated lead-based paint, lead-contaminated dust, lead-contaminated soil, or disturbing lead-based paint without containment, if one or more of these hazards are present in one or more locations in amounts that are equal to or exceed the amounts of lead established for these terms in Chapter 8 (commencing with Section 35001) of Division 1 of Title 17 of the California Code of Regulations or by this section and that are likely to endanger the health of the public or the occupants thereof as a result of their proximity to the public or the occupants thereof.

(b) In the absence of new regulations adopted by the State Department of Health Services in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) further interpreting or clarifying the terms "deteriorated lead-based paint," "lead-based paint," "lead-contaminated dust," "containment," or "lead-contaminated soil," regulations in Chapter 8 (commencing with Section 35001) of Division 1 of Title 17 of the California Code of Regulations adopted by the

State Department of Health Services pursuant to Sections 105250 and 124150 shall interpret or clarify these terms. If the State Department of Health Services adopts new regulations defining these terms, the new regulations shall supersede the prior regulations for the purposes of this part.

(c) In the absence of new regulations adopted by the State Department of Health Services in accordance with the rulemaking provisions of the Administrative Procedure Act defining the term "disturbing lead-based paint without containment" or modifying the term "deteriorated lead-based paint," for purposes of this part "disturbing lead-based paint without containment" and "deteriorated lead-based paint" shall be considered lead hazards as described in subdivision (a) only if the aggregate affected area is equal to or in excess of one of the following:

(1) Two square feet in any one interior room or space.

(2) Twenty square feet on exterior surfaces.

(3) Ten percent of the surface area on the interior or exterior type of component with a small surface area. Examples include window sills, baseboards, and trim.

(d) Notwithstanding subdivision (c), "disturbing lead-based paint without containment" and "deteriorated lead-based paint" shall be considered lead hazards, for purposes of this part, if it is determined that an area smaller than those specified in subdivision (c) is associated with a person with a blood lead level equal to or greater than 10 micrograms per deciliter.

In sections 8 and 9 of SB 460 (which adds Health & Safety §§ 105255 - 105256), "lead hazard" means deteriorated lead-based paint, lead contaminated dust, lead contaminated soil, disturbing lead-based paint or presumed lead-based paint without containment, or any other nuisance which may result in persistent and quantifiable lead exposure. (Health & Safety Code § 105251, which incorporates the current Title 17 definition of "lead hazard.")

CLPPB has prepared a model protocol that jurisdictions may find useful in structuring their complaint investigations. (See "Model Complaint Investigation Field Protocol," CLPPB, November 2002)

5. If we want to investigate a tip or complaint about a potential lead hazard, does the person performing the inspection need to be DHS-certified?

Persons who are conducting "lead hazard evaluations" must be DHS-certified. A "lead hazard evaluation" is defined in Title 17 regulations as "the on-site investigation, for compensation, of lead-based paint or lead hazards, such as a lead inspection, risk assessment, and clearance inspection, for public and residential buildings, but does not include activities intended to determine adequacy of containment . . ." (17 CCR § 35038).

If the lead hazard complaint is about the adequacy of containment for disturbing presumed lead-based paint without containment, certification is not required.

However, to confirm the presence of lead-based paint, or lead-contaminated dust or soil, the person sampling must be DHS-certified. The "Model Complaint Investigation Field Protocol" provides related guidance.

6. If a lead hazard is identified, must abatement be ordered?

This will depend on the circumstances and the specific law you are using as authority to order the abatement. If you are using State Housing Law (Health & Safety Code § 17920.10), the lead hazard must be "likely to endanger the health of the public or occupants thereof as a result of their proximity to the public or the occupants thereof." As with any potential code or health violation, the circumstances surrounding the lead hazard will influence your determination regarding whether or not it is appropriate to order abatement. If children will be exposed to the lead hazard, it should be abated to prevent a child from developing an elevated blood lead level.

7. If abatement (or cease and desist) is ordered, what are the next steps?

If you have ordered abatement or other corrective action of a lead hazard as defined in State Housing Law, your jurisdiction's current procedures for enforcing these kinds of orders may be followed. However, only your legal representative can affirm this.

If you have ordered abatement or other corrective actions under Health & Safety Code §§ 105255 or 105256, look to your existing framework for enforcing these kinds of laws. Again, your jurisdiction's legal representative can give you guidance. If you don't have enforcement mechanisms in place, DHS can work with your jurisdiction to provide technical expertise in developing the appropriate forms and procedures.